LAKE EYRE BASIN AGREEMENT BILL 2001

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives of the Bill

The Lake Eyre Basin Agreement Bill 2001 (the Bill) provides the Legislative Assembly with the opportunity to approve and ratify the Lake Eyre Basin Intergovernmental Agreement. The Lake Eyre Basin Intergovernmental Agreement is an agreement made between the governments of Queensland, South Australia and the Commonwealth of Australia, the aims of which are to ensure that: the water resources of the Lake Eyre Basin are managed in a sustainable manner; the social, cultural and environmental values of the Basin are protected; and the economic values of the Basin are maintained and, if possible, enhanced. The Agreement recognises that the management of the Basin which best serves the object of sustainability, requires a joint cooperative approach between the three governments.

Why the proposed legislation is necessary

The Lake Eyre Basin Intergovernmental Agreement requires the ratification of the Agreement by the Parliaments of South Australia and Queensland. The Agreement comes into effect once it has been so approved and ratified.

Means of Achieving the Objectives

Clause 3 of the Bill provides for the approval and ratification of the Agreement.

Estimated Cost of Implementation for Government

The cost of the arrangements to be established under the Agreement has been set at $500,000. Queensland's share of this is to be $125,000, based

on an agreed cost sharing of 50% Commonwealth, 25% Queensland, 25% South Australia. Queensland's contribution is to be covered within current Departmental funding, with no new funding required.

Consistency with Fundamental Legislative Principles

The Bill is consistent with FLPs.

Consultation

The Agreement has been developed with strong community support. Consultation with all industry and community stakeholders has occurred at all stages of the development of the Agreement. Prior to the signing of a Heads of Agreement in May 1997 and leading up to signing of the Agreement in October 2000, a discussion paper was published, submissions received and responses provided. In addition, a number of public meetings were held throughout the Basin. Since the Agreement was signed a "Question and Answer" brochure explaining the Agreement has been widely distributed throughout the Basin. There is general community support for the Agreement. In addition, the Agreement provides for a Basin-wide community advisory group to advise the Ministerial Forum, thus ensuring continuing consultation with stakeholders.

Clause 1 provides for the short title of the Bill to be the *Lake Eyre Basin Agreement Act 2001*.

Clause 2 defines the term "agreement" to mean Lake Eyre Basin Intergovernmental Agreement, and provides that a copy of the agreement is located in the schedule to the Bill.

Clause 3 provides for the ratification and approval of the agreement.

Clause 4 provides for the facilitation of the agreement. In particular, it authorises the Minister and State to do anything reasonably necessary to ensure the performance and observance of the agreement. This clause, which is required under clause 9.3(a) of the agreement, in no way authorises the Minister or State to act other than in accordance with the appropriate laws, including the *Water Act 2000*.

The schedule to the Bill sets out the body of the agreement.

The Recitals to the agreement note:

- the ecological and environmental significance and high economic worth of the Basin, the sustainability of which depends on the

continued health of the Thomson/Barcoo/Cooper, Georgina and Diamantina river systems (including their catchments, flood plains, lakes, wetlands and overflow channels);

- that management of the Basin which best serves the object of sustainability requires a joint cooperative approach between the three governments;
- the agreement is premised on a Heads of Agreement dated 26 May 1997;
- the agreement provides for the establishment of arrangements for the management of water and related natural resources of that portion of the Basin identified in clause 1.1 of the agreement;
- that the agreement is entered into in recognition of the Intergovernmental Agreement on the Environment dated 1 May 1992; and
- that the agreement is consistent with the Council of Australian Government's National Water Reform Framework and the Natural Heritage Trust Partnership agreements.

PART I—APPLICATION AND INTERPRETATION

Clause 1.1 defines the area to which the agreement applies (the agreement area).

The remainder of clause 1 (clauses 1.2 to 1.6) provides for the interpretation of the agreement. Clause 1.6, in particular, provides that questions of interpretation of the agreement are to be raised in the Ministerial Forum constituted under the agreement. Clause 1.6 obviously would not oust the jurisdiction of a relevant court to consider any issue relating to the interpretation of the agreement.

PART II—PURPOSE AND OBJECTIVES

Clause 2.1 establishes that the purpose of the agreement is to develop, adopt and implement policies and strategies relating to the management of the water and related natural resources of the agreement area, particularly so as to avoid or eliminate so far as reasonably practicable adverse cross-border impacts.

Clause 2.2 provides the objectives of the agreement to be:

- to provide a means for the parties to come together in good faith to achieve the purposes of the agreement;
- to define a process and context for raising and addressing those water and related natural resource management issues in the agreement area that have cross-border impacts, particularly relating to water quantity and quality, and flow regimes;
- to establish institutional arrangements for the development and adoption of policies and strategies and for the adoption of State management plans;
- to provide each of the parties, so far as they are able within their jurisdictions, to progress the implementation of policies and strategies made under the agreement and to make appropriate management and allocation decisions;
- to provide a mechanism to review policies and strategies;
- to provide for the parties to jointly promote and support the management of water and related natural resources through a cooperative approach between all relevant stakeholders;
- to encourage, promote and support water and related resource management practices in accordance with the purpose of the agreement;
- to encourage and promote research and monitoring in the agreement area;
- to provide for the review and revision of the agreement; and
- to raise general public awareness of the special biodiversity and heritage values of the agreement area.

PART III—GUIDING PRINCIPLES

Clause 3.1 sets out the principles which will guide the consideration of all issues and the making of all decisions under the agreement; particularly that:

- the agreement area has important social, environmental, economic and cultural values which need to be conserved and promoted;
- aspects of the agreement area are valuable for aesthetic, wilderness, cultural and tourism purposes;
- naturally variable flow regimes and the maintenance of water quality are fundamental to the health of the aquatic ecosystems in the agreement area;
- the water requirements for ecological processes, biodiversity and ecologically significant areas within the agreement area should be maintained, especially by means of flow variability and seasonality;
- flooding throughout the catchments within the agreement area significantly benefits pastoral activities and flood plain ecosystem processes;
- the storage and use of water within and away from watercourses, including associated ground water, is inter-linked, and that resources throughout the catchments in the agreement area should be managed on an integrated basis;
- a precautionary approach needs to be taken;
- natural resource management decisions need to be made within the context of the National Strategy for Ecologically Sustainable Development and other relevant national and international obligations;
- the communities of the agreement area possess collective local knowledge and experience of significant value; and
- that decisions need to be based on the best available scientific and technical information together with the collective local knowledge and experience of communities within the agreement area.

PART IV—ROLES OF THE PARTIES

This Part of the agreement sets out the responsibilities of the parties. In short, the Commonwealth will be responsible primarily for matters relating to Australia's international obligations, while the two State governments are to comply with the agreement to the fullest extent possible whilst acting in accordance with the relevant legislation of each State.

Clause 4.1 provides that the subsequent clauses are to guide the parties in defining their roles, responsibilities and interests in relation to the achievement of the objectives of the agreement.

Clause 4.2 requires the Commonwealth, when dealing with issues of national interest, to ensure that the policies or practices of a State that affect or might affect the water and related natural resources to which the agreement applies, do not result in significant adverse external effects to another State.

Clause 4.3 provides that when acting under clause 4.2, the Commonwealth will have regard to the role of the States in dealing with significant adverse external effects in accordance with the Intergovernmental Agreement on the Environment, and any action taken under that agreement.

Clause 4.4 requires the Commonwealth to monitor the activities of the States in the agreement area to ensure that international obligations are met in accordance with the Intergovernmental Agreement on the Environment.

Clause 4.5 makes the Commonwealth responsible for the management (including operational policy) of natural resources on land which the Commonwealth owns or which it occupies for its own use.

Clause 4.6 provides that the Commonwealth must ensure that matters of national interest relating to environmental protection, sustainable agriculture and water and related natural resources management in the agreement area are addressed in consultation with the States.

Clause 4.7 requires the Commonwealth to consult with the States before it enters any international agreement that may directly impact the agreement area.

Clause 4.8 puts beyond doubt that each State continues to be responsible for developing and implementing policy relating to matters concerning the agreement area that have no significant effects on the water and related natural resources of the area.

Clause 4.9 provides that each State continues to be responsible for its policy formulation and the administration of its legislation relevant to water and related natural resource management within the agreement area, but in so doing, to the fullest extent that it is able, each State is required to comply with the agreement and applicable policies and strategies. Clause 4.9, in addition, requires each State, as may be necessary, to use its best endeavours to secure the passage of legislation through its Parliament for the purpose of conforming with and implementing the agreement and any policies and strategies developed or adopted under the agreement.

Clause 4.10 requires each State to assist in encouraging and promoting research and monitoring in the agreement area, and to allow access to the results of any such research and monitoring, to the extent that either State controls such access.

Clause 4.11 requires each State, where appropriate, to consult with local government in implementing the agreement and the policies and strategies developed or adopted under it, in a manner which reflects the partnership between the three tiers of government.

PART V—INSTITUTIONAL STRUCTURE

Clause 5.1 constitutes the ministerial forum.

Clause 5.2 provides that the ministerial forum consists of one Minister from each State and one Minister of the Commonwealth.

Clause 5.3 provides for the eventuality where a member of the ministerial forum is unable to attend a forum meeting or is otherwise unable to perform the member's duties.

Clause 5.4 requires the ministerial forum to meet at least once in each year but otherwise at such times as it sees fit. Furthermore, the forum is empowered, subject to the agreement, to determine its own procedure.

Clause 5.5 provides that a resolution of the ministerial forum can be carried only by unanimous vote.

Clause 5.6 provides that the chair of the ministerial forum will be the Commonwealth Minister.

Clause 5.7 requires a permanent record of all resolutions of the ministerial forum.

Clause 5.8 charges the ministerial forum with the responsibility for implementing the agreement.

Clause 5.9 requires the ministerial forum to ensure that it has satisfactory access to community advice in relation to matters pertaining to the agreement.

Clause 5.10 goes on to provide that to meet the requirement of clause 5.9, the ministerial forum may either:

- adopt one or more independently formed groups, committees or bodies to provide community advice representation and feedback; or
- appoint the members of a committee to perform that function.

Clause 5.11.1 requires that the community consultation must provide for appropriate representation of: Aboriginal interests; pastoral interests; agricultural interests; mining and petroleum interests; conservation interests; tourism interests; and matters and interests affecting those parts of the Cooper Creek and Diamantina River systems falling within the agreement area.

Clause 5.11.2 details the roles to be satisfactorily performed as part of the ministerial forum's consultation process.

Clause 5.12 sets out issues to apply when the ministerial forum adopts an independently formed group to provide advice. In particular, subject to funds being available under the agreement, the adopted group may receive such allowances and expenses as the ministerial forum may determine. Further, the clause provides that the ministerial forum may at any time determine that an adopted group will cease to be its provider of advice; however, the ministerial forum must within a reasonable time (and in any event before any relevant significant decisions are made) replace that source of community advice in accordance with the agreement.

Clause 5.13 applies when the ministerial forum chooses to appoint a committee to provide community advice, representation and feedback, in which case:

- each member is to be appointed by the forum;
- when appointing members to represent Aboriginal interests the forum will have regard, as a fundamental element of its decisions, to the recommendations made by the Aboriginal communities of the agreement area;

- the forum may appoint members to the committee to fill vacancies;
- the forum, at any time, may appoint additional members to a committee;
- appointment of members to a committee will be for a period of three years with the proviso that members may be eligible for re-appointment for such terms as the forum thinks appropriate;
- subject to the availability of funds under the agreement, a committee member will receive such allowances and expenses as the forum determines;
- the forum, at any time but only under specified conditions, may terminate the appointment of individual members or disband a committee; and
- the forum may appoint to a committee the individual members of a group, committee or body independently formed.

PART VI—CONFERENCE

Clause 6.1 provides that the ministerial forum may arrange conferences to be attended by the members of the forum, members of committees appointed or adopted under the agreement and of other interested groups, interested individuals, scientific and technical advisers and senior government officers.

Clause 6.2 requires there to be a conference at least once before the second anniversary of the effective date of the agreement. Thereafter, conferences should be held, at least, biennially.

Clause 6.3 provides that the purpose of a conference will be to exchange information and views on issues relevant to the operation of the agreement.

PART VII—SCIENTIFIC AND TECHNICAL ADVICE

Clause 7.1 provides that the ministerial forum may seek scientific and technical advice relevant to the agreement from whatever source it considers appropriate. In particular, scientific and technical advice may be obtained in relation to the identification of requirements for the effective monitoring of the condition of the rivers and catchments within the agreement area and the establishment of programs to meet those requirements.

Clause 7.2 allows the ministerial forum to establish a panel of scientists and technicians for the purpose of providing relevant advice to it.

PART VIII—POLICIES AND STRATEGIES

Clause 8.1 requires the ministerial forum, without unnecessary delay, to develop or adopt policies and strategies in accordance with the purpose, objectives and principles of the agreement.

Clause 8.2, in addition, empowers the ministerial forum to vary or revoke policies and strategies, and to make supplementary policies and strategies.

Clause 8.3 provides that the ministerial forum may adopt management plans prepared by the States providing those plans are consistent with the agreement and with the relevant policies developed or adopted under the agreement. Once adopted, such plans are treated as plans of the ministerial forum made under the agreement.

Clause 8.4 determines that the policies and strategies under the agreement will provide for such matters as the ministerial forum thinks fit, including but not being limited to:

- objectives for water quality and river flows;
- objectives for water and related natural resource management in the agreement area for the achievement of the water quality and river flow objectives;

- catchment management policies and strategies for the achievement, as far as practicable, of the water quality and river flow objectives;
- policies for dealing with relevant existing entitlements under State laws and significant water related developments; and
- research and monitoring requirements and programs to meet those requirements.

PART IX—RATIFICATION AND EFFECTIVE DATE

Clause 9.1 provides that aside from this Part of the agreement, the remainder of the agreement is subject to the approval and ratification by the Parliaments of South Australia and Queensland, at which time the agreement will come into effect.

Clause 9.2 requires that any amendment to the agreement, including the addition or amendment of a schedule approved by the ministerial forum under clause 10 or 12, is subject to approval and ratification by the Parliaments of South Australia and Queensland and will come into effect only when so approved and ratified.

Clause 9.3 requires each State to take all practical steps to seek the enactment of legislation:

- approving and ratifying the agreement, and any amendment to the agreement; and
- authorising and requiring the performance and observance of the agreement by the Government of the State.

PART X—REVIEW AND AMENDMENT

Clause 10.1 requires the ministerial forum to cause a review of the operation of the agreement and the extent to which the objectives of the agreement have been met, to be undertaken without unnecessary delay after

the fifth anniversary of the effective date of the agreement, and thereafter on a ten yearly basis.

Clause 10.2 requires a report of a review to be tabled in the Parliament of each State and presented to the Commonwealth Minister within 12 months of its completion.

Clause 10.3 requires the ministerial forum to cause a review of all policies and strategies to be undertaken without unnecessary delay after the fifth anniversary of the development or adoption of the particular policies and strategies, and thereafter as necessary but not less frequently than on a ten yearly basis.

Clause 10.4 requires the ministerial forum to cause a review of the condition of all watercourses and catchments within the agreement area to be undertaken without unnecessary delay after the effective date of the agreement, and thereafter on a ten yearly basis.

Clause 10.5 provides that the ministerial forum may approve amendments to the agreement, including amendments to or addition of schedules to the agreement. However, as provided for in clause 9.2, any amendment to the agreement, including the addition or amendment of a schedule, is subject to approval and ratification by the Parliaments of South Australia and Queensland and will come into effect only when it is so approved and ratified.

PART XI—FUNDING AND ACCOUNTABILITY ARRANGEMENTS

Clause 11.1 provides that, subject to the availability of the respective appropriations, the parties will make available all necessary financial and other resources for the establishment and operation of the ministerial forum and associated institutional arrangements.

Clause 11.2 provides that the parties are to determine and agree upon appropriate cost-sharing arrangements, reflecting their respective roles and responsibilities under the agreement.

Clause 11.3 requires any advisory group appointed or adopted under Part V of the agreement, that is funded under the agreement, to produce to the ministerial forum, each financial year, a full account of its application of all

funds received by it together with a report of its activities towards which such funding has been applied.

PART XII—FURTHER PARTIES

Clause 12.1 provides the conditions on which New South Wales and the Northern Territory may become parties to the agreement.

Clause 12.2 empowers the ministerial forum to approve a schedule made under clause 12.1(b), prescribing the terms and conditions on which New South Wales or the Northern Territory may become parties to the agreement.

Clause 12.3 provides that the agreement will not apply to New South Wales or the Northern Territory until:

- a copy of the agreement incorporating the schedule provided for in clause 12.1(b) has been signed on behalf of that State or Territory and the Parliament of that State or Territory has approved the agreement, including the schedule; and
- the schedule has been approved and ratified by the States under Part IX.

Clause 12.4 requires each State to take the steps referred to in Part IX for the approval and ratification of any schedule approved by the ministerial forum under this clause.

PART XIII—GENERAL

Clause 13 provides that the agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.